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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 MARY B. LABRADOR, individually and on)
behalf of all others similarly situated,)

16 Plaintiff,)

17 vs.)

18 SEATTLE MORTGAGE COMPANY,)

19 Defendant)
20)
21)

Case No.: CV-08-2270 SC

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: Sept. 5, 2008
Time: 10:00 A.M.
Courtroom: B, 15th Fl.
Before: Hon. Samuel Conti

1 Plaintiff Mary Labrador ("Plaintiff") and Defendant Seattle Mortgage Company ("SMC")
2 submit this Joint Case Management Statement in connection with the Initial Case Management
3 Conference to be held on September 5, 2008.

4 1. Jurisdiction and Service

5 This action was filed in the Superior Court for the City and County of San Francisco on
6 March 19, 2008 and was removed to this Court on May 1, 2008. The Court has jurisdiction
7 pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d). All parties have been served.

8 2. Facts

9 Plaintiff Mary Labrador is an 82-year-old resident of San Francisco who obtained a
10 federally-insured "reverse mortgage" loan from SMC in August 2006. The loan was arranged
11 through Plaintiff's mortgage broker, Home Center. Among the various closing costs that Ms.
12 Labrador was charged was a \$7,255.80 "origination fee" which was paid to SMC but conveyed
13 in its entirety to Home Center. SMC also paid Home Center a "correspondent fee" of \$490 in
14 connection with the loan.

15 Plaintiff alleges that the origination fee violated applicable regulations promulgated by
16 the Department of Housing and Urban Development (HUD) and was unlawful. An origination
17 fee is intended to compensate a lender for costs and expenses incurred in connection with the
18 making of a loan. In this case, however, the purpose and effect of the fee was to give Home
19 Center a financial incentive to refer, and continue referring, reverse mortgage customers to SMC.
20 Payment of such "back door" referral fees is prohibited by HUD regulation 24 C.F.R. §
21 206.31(a)(1), which states: "A mortgage broker's fee can be included as part of the origination
22 fee only if the mortgage broker is engaged independently by the homeowner *and if there is no*
23 *financial interest between the mortgage broker and the mortgagee* [emphasis added]." Plaintiff
24 contends that SMC's payment of a correspondent fee created a "financial interest" between SMC
25 and Home Center, and that no origination fees could, therefore, legally be charged. Plaintiff
26 avers that similar unlawful origination fees were charged to thousands of other seniors who
27 obtained reverse mortgage loans through mortgage brokers who referred them to SMC, and seeks
28 relief on behalf of all such similarly-situated individuals.

1 SMC disputes those allegations, contending that the payment of the correspondent fee to
2 Home Center does not create a "financial interest" between SMC and Home Center within the
3 meaning of the HUD regulations. Accordingly, the payment of the origination fee in plaintiff's
4 loan transaction is not illegal or improper in any way.

5 3. Legal Issues

6 Plaintiff contends that SMC's failure to comply with the HUD regulations pertinent to
7 reverse mortgage loans constitutes financial elder abuse prohibited by the California Elder Abuse
8 Act, Welf. & Inst. Code § 15610.30 and § 15657.5; an unlawful business practice prohibited by
9 the California Unfair Competition Law, Bus. & Prof. Code § 17200; and an unfair consumer
10 practice for which she is entitled to relief under the Consumers Legal Remedies Act, Civil Code
11 § 1750 *et seq.* Plaintiff asks the Court to impose a constructive trust on the unlawfully collected
12 fees; to declare the rights of the parties; to enjoin future wrongdoing; and to award restitution and
13 penalties to the class.

14 SMC contends that there is no "financial interest" between SMC and its mortgage
15 brokers, and that the absence of such an interest is fatal to all of Plaintiff's claims. SMC also
16 contends that there is no private right of action under the Elder Abuse Act and that the CLRA is
17 inapplicable to Plaintiff's claims.

18 4. Motions

19 SMC has filed a motion to dismiss each of Plaintiff's causes of action, which is scheduled
20 to be heard the same day as this Conference.

21 5. Amendment of Pleadings

22 None expected.

23 6. Evidence Preservation

24 Plaintiff has requested that SMC undertake all appropriate actions to preserve the
25 evidence relevant to her claims.

26 SNC has implemented a "litigation hold" to preserve documentation, electronic or
27 otherwise, relevant to the matters at issue in this lawsuit. The preserved documentation includes
28

1 information regarding plaintiff's account, including correspondence, account details, and
2 origination file.

3 7. Rule 26 Disclosures

4 The parties have agreed to exchange Rule 26 disclosures on September 26, which is three
5 weeks after the hearing on SMC's motion to dismiss.

6 8. Discovery

7 Discovery has not yet commenced. The parties anticipate that they will exchange
8 document requests and interrogatories and take depositions after Initial Disclosures are
9 completed. Expert testimony regarding the reverse mortgage industry and Plaintiff's damages
10 claims will likely be presented, and the parties will need to need to engage in appropriate
11 discovery into those issues.

12 9. Class Action Proposal

13 A proposed schedule for the briefing and determination of Plaintiff's class certification
14 motion is set forth in section 17 below.

15 10. Related Cases

16 None.

17 11. Relief

18 Plaintiff seeks the following relief:

19 Restitution of all origination fees wrongfully collected from class members, with interest
20 thereon, pursuant to Bus. & Prof. Code § 17200;

21 Imposition of a constructive trust;

22 Treble damages and penalties for elder abuse, pursuant to Civil Code § 3345;

23 Reasonable attorneys' fees and costs, pursuant to Welf. & Inst. Code § 15657.5 and Civil
24 Code § 1780(d);

25 An injunction prohibiting SMC from continuing to engage in unlawful reverse mortgage
26 practices; and

27 A declaration of SMC's liability and future obligations.

28 12. Settlement and ADR

Each of the parties has filed an ADR certification and an ADR Stipulation agreeing to mediation before a Magistrate Judge. The Court has ordered that a mediation session be conducted on or before November 19, 2008. The date has not yet been set.

13. Consent to Magistrate

SMC has declined to consent to the assignment of this case to a U.S. Magistrate Judge.

14. Other References

No other references are contemplated at this time.

15. Narrowing of Issues

The parties reserve their rights to move for summary adjudication.

16. Expedited Schedule

This is a putative class action involving complex factual issues and novel issues of law; it is not appropriate for expedited scheduling.

17. Proposed Schedule

The parties have agreed on the following proposed schedule. The parties request that further scheduling decisions, including the timing of expert disclosures, dispositive motions, and pretrial matters, be deferred until after the Court determines whether to certify the case as a class action.

5/30/09	Completion of class certification fact discovery
6/26/09	Plaintiff to file motion for class certification
7/24/09	Defendant to file opposition to motion for class certification
8/7/09	Plaintiff to file reply in support of class certification
_____	Hearing on class certification
_____	Case Management Conference (2 weeks after ruling on class certification)

18. Trial

Plaintiff has demanded a jury trial. The parties will address the issues related to the trial in their subsequent Case Management Statement.

19. Disclosure of Non-party Interested Entities or Persons

1 On May 1, 2008, SMC filed a Certificate of Interested Parties (Civil L.R. 3-16) disclosing
2 that Seattle Savings Bank is its parent company and Seattle Financial Group is its holding
3 company.

4 20. Other Matters

5 The parties have agreed to stipulate to a protective order modeled on the Northern
6 District form.

7 Dated: August 29, 2008

CHAVEZ & GERTLER LLP

8 BONNETT, FAIRBOURN, FRIEDMAN
9 & BALINT, PC

10 By:




11 Nance F. Becker
12 Attorneys for Plaintiff

13 Dated: August 29, 2008

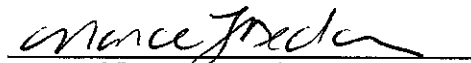
SEVERSON & WERSON

14 By:

15 /s/

16 
Sunny Huo
Attorneys for Defendant

17 I certify that Sunny Huo has authorized me to sign this Joint Case Management
18 Conference Statement on his behalf.

19 

20 Nance F. Becker
21
22

23 **Plaintiff's Supplemental Class Action Statement (Local Rule 16-9(b))**

24 1. Plaintiff initially brought this putative class action pursuant to California Code of
25 Civil Procedure § 382 and Civil Code § 1780. Class certification is equally appropriate under
26 subsections (b)(2) and (b)(3) of Fed.R.Civ.Proc. 23.

27 2. Plaintiff seeks to represent herself and a class consisting of the following
28 individuals:

1 All "elders" in California: (a) who used a mortgage broker to purchase a
 2 reverse mortgage that was originated, structured and/or underwritten by
 3 Defendant at any time during the four years preceding the filing of this
 4 Complaint, and continuing until the date of trial; and (b) who were charged
 an "origination fee" that was conveyed, in whole or in part, to an originating
 mortgage broker, when the mortgage broker was also paid a
 "correspondent fee" or similar fee in connection with the loan.

5 3. Plaintiff satisfies all of the requirements necessary to certify a class under Rule
 6 23(a):

7 (1) Class treatment is appropriate because the members of the proposed Class are so
 8 numerous that joinder of all members would be impracticable. Plaintiff estimates that Class
 9 members number into the thousands; for example, in a pleading filed in January 2008, Bank of
 10 America (who has purchased all or a portion of SMC's business) stated that SMC made 2,200
 11 reverse mortgages to California residents during the relevant time period.

12 (2) There are material questions of fact and law common to all members of the Class.
 13 These include, but are not limited to, the following:

14 Whether the payment of correspondent fees creates a "financial interest" between SMC
 15 and its mortgage brokers;

16 Whether SMC has charged, and is continuing to charge, consumers reverse mortgage
 17 origination fees which violate HUD regulations;

18 Whether SMC's conduct violates the Elder Abuse Act;

19 Whether the reverse mortgage products and services at issue are "goods or services"
 20 subject to the CLRA;

21 Whether SMC has committed unlawful business practices; and

22 Whether SMC has been unjustly enriched.

23 (3) Plaintiff's claims are typical of those of the absent Class Members. Because reverse
 24 mortgages are based on the value of the residence securing the loan and not on individual
 25 characteristics (such as the credit score) of the borrower, reverse mortgage cases are uniquely
 26 amenable to class resolution.

27 (4) Plaintiff is typical of SMC's reverse mortgage customers and is ready, willing and
 28 able to represent the interests of the Class. Plaintiff has retained counsel who are highly

1 experienced in complex class action litigation, including class actions involving consumer
2 financial services. Plaintiff's counsel will vigorously prosecute this action, and will fairly and
3 adequately protect the interests of the Class.

4 Plaintiff satisfies all of the requirements necessary to certify a class under Rule 23(b)(2).
5 The challenged practices reflect SMC's standard policies and practices with regard to the
6 compensation of correspondent lenders and mortgage brokers. With respect to the assessment of
7 origination fees, SMC has acted and continues to act on grounds generally applicable to each
8 member of the Class, and it is therefore appropriate to award injunctive and/or declaratory relief
9 with respect to the Class as whole.

10 Plaintiff also satisfies the requirements necessary to certify a class under Rule 23(b)(3).
11 The common questions identified above are common to all members of the Class, and
12 predominate over any questions affecting individual members. Origination fees are based on a
13 standard formula, and the amount of restitution due to each Class member can easily be
14 determined by reference to his or her HUD-1 settlement statement. The amount at stake for any
15 individual Class Member is small, thus making disputes regarding control of the litigation highly
16 unlikely.

17 4. As set forth above, the parties propose that Plaintiff file her motion for class
18 certification on June 26, 2009.

19
20 Dated: August 29, 2008

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23
24 By:



Nance F. Becker
Attorneys for Plaintiff